

S.A.(MD)No.434 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.06.2026

DELIVERED ON : 10.07.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.434 of 2022

and

C.M.P.(MD)No.5314 of 2022

T.R.Krishnamoorthy

... Appellant

Vs.

K.Kuppusamy

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to call for the records and set aside the judgment and decree dated 13.01.2020 in A.S.No.9 of 2016 on the file of the Principal District Judge, Trichy, confirming the judgment and decree dated 29.02.2016 in O.S.No.663 of 2009, on the file of the II Additional Subordinate Judge, Trichy and allow the Second Appeal.

For Appellant : Mr.H.Lakshmi Shankar

For Respondent : Mr.S.Vinod Sathya Lazar



S.A.(MD)No.434 of 2022

WEB COPY

JUDGMENT

The unsuccessful defendant in a suit for recovery of money based on a promissory note is the appellant, challenging the concurrent findings of the Trial Court as well as the First Appellate Court.

2.I have heard Mr.H.Lakshmi Shankar, learned Counsel for the appellant and Mr.S.Vinod Sathya Lazar, learned Counsel for the respondent.

3.The Second Appeal was admitted by me on 08.04.2026, on the two following substantial questions of law:

“(i) Whether the Courts below are justified in concluding that the appellant / defendant failed to rebut the legal presumption of Ex.A.1 promissory note in the light of the documents filed by the defendant, particularly Ex.B.2, Ex.B.3, Ex.B.4, Ex.B.5, Ex.B.6 & Ex.B.11 that prove that actual issue between plaintiff and defendant and whether the Courts below were justified in ignoring those documents that were not disputed?

(ii) Whether the First Appellate Court's reasoning for rejecting the application in I.A.No.



WEB COPY



S.A.(MD)No.434 of 2022

229 of 2016, I.A.No.229 of 2016, I.A.No.103 of 2017 & I.A.No.2 of 2019, filed under Order 41 Rule 27 CPC, without adverting to the contents in those documents and their impact prima facie to the case of the plaintiff and by ignoring Order 41 Rule 28 of CPC sustainable in law?"

4.Mr.H.Lakshmi Shankar, learned Counsel for the appellant would revolve his submissions based on the two substantial questions of law that have been framed for consideration. According to Mr.H.Lakshmi Shankar, the defendant was a broker who brought customers to the plaintiff who was dealing with sale of second-hand vehicles and in the course of business, it was the practice of the plaintiff to take signatures of the defendant in blank papers. Inviting my attention to the lawyer's notice issued by the appellant on 11.02.2008, to which admittedly, there was no reply on the side of the respondent / plaintiff, Mr.H.Lakshmi Shankar, would contend that the Courts below failed to divert their attention to the effect of the said notice, the allegations and claims contained therein and ought to have seen that it was only an after-thought and more as a measure of revenge that the suit claim has been made, misusing the signed blank promissory note available with the plaintiff.



S.A.(MD)No.434 of 2022

WEB COPY

5.Mr.H.Lakshmi Shankar, would take me through the various documents in Exs.B.2 to B.6 and B.11 and would contend that the documentary evidence produced on the side of the defendant clearly pointed out to the fact that there was no money due and payable by the defendant to the plaintiff and if really any money was due and payable, when serious allegations were hurled against the plaintiff, even in 2007, he would have certainly replied to the said notice and would not have kept quite. He would also refer to the evidence of the alleged witnesses P.W.2 & P.W.3 and according to Mr.H.Lakshmi Shankar, the witnesses to the pro-note dated 25.06.2007 and scribe, were stock witnesses and their evidence was totally uninspiring and also unworthy of any credence. He would also take me through the application taken out under Order 41 Rule 27 CPC, before the First Appellate Court and would contend that in the interest of justice, the First Appellate Court ought to have entertained the said application and given an opportunity to the appellant to rebut the presumption with regard to the pro-note having been executed for consideration.



S.A.(MD)No.434 of 2022

WEB COPY

6.Mr.H.Lakshmi Shankar, in support of his contentions would also rely on the decision of the Hon'ble Supreme Court in the case of ***Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Pyarelal***, reported in ***AIR 1999 SC 1008***.

7.Per contra, Mr.S.Vinod Sathya Lazar, learned Counsel appearing for the respondent / plaintiff would firstly contend that two Courts, after elaborate consideration of the pleadings and evidence on record, have concurrently come to the finding that the defendant had borrowed moneys and having admitted the execution of the promissory note, the defendant had failed to rebut the presumption under Section 118 of the Negotiable Instruments Act. He would therefore, state that no interference is warranted under Section 100 of CPC. Further, he would also point out to the evidence of D.W.1, admitting to his signature as well as left thumb impression in the suit promissory note dated 25.06.2007. He would also state that it is not as if the respondent / plaintiff remained silent even after receipt of the notice from the defendant on 11.02.2008. In this regard, he would state that the admitted case of the parties was that pursuant to the notice, the plaintiff had lodged a police complaint and had even recovered the vehicle from the



S.A.(MD)No.434 of 2022

custody of the appellant / defendant and admittedly, the suit promissory note was prior to the notice issued on 11.02.2008. Mr.Vinod Sathya Lazar, would also invite my attention to the admissions of D.W.1 with regard to the execution of the promissory note in 2007 itself.

8.As regards the non-replying to the notice dated 11.02.2008, learned Counsel would state that mere non-replying to a lawyer's notice cannot be held to be fatal and in any event, according to Mr.Vinod Sathya Lazar, the plaintiff even in the plaint, on noticing the factum of reply having not been sent, from the reply notice dated 19.02.2009 marked as Ex.A.4, the plaintiff / respondent has pleaded about the factum of non-replying to the notice dated 11.02.2008 in Ex.A.5 and also explained the reasons satisfactorily for not having responded to the said Ex.A.5 notice. He would further state that by examining P.W.2, the plaintiff / respondent had also established passing of consideration and there is no dent in the cross examination of P.W.2, with regard to either the execution of the promissory note or the passing of consideration under the suit promissory note. Learned Counsel therefore, states that no substantial questions of law arises for consideration and the Second Appeal deserves to be dismissed.



S.A.(MD)No.434 of 2022

WEB COPY

9.I have carefully considered the submissions advanced by the parties on either side.

10.The suit claim was made by the respondent as plaintiff, for recovery of moneys due and payable under suit promissory note dated 25.06.2007. A pre-suit notice was issued on 11.08.2009, to which Ex.A.4, reply notice was sent on 19.08.2009, denying all liability to pay the alleged claim under the suit promissory note. According to the plaintiff, on noticing the reference to Ex.A.5 lawyer's notice dated 11.02.2008, the plaintiff has clearly averred about the receipt of the said notice and also explained the reasons for not replying to the same. In fact, the said notice has been marked by the plaintiff himself as Ex.A.5 and therefore, there is absolutely no difficulty in finding that despite receipt of Ex.A.5 notice, there has been no reply to the same.

11.The case of the defendant, in defence, is that the plaintiff was dealing with sale of vehicles and the defendant was a broker who used to take customers to the plaintiff and in one such transaction dealing with a Tipper lorry bearing registration number TN 69 B 8115, the plaintiff took signature of the defendant in a



S.A.(MD)No.434 of 2022

blank promissory note. There was a dispute with regard to the sale of the vehicle and according to the defendant, he was forced to pay one Venkatesh, a sum of Rs.1,40,000/-, Rs.20,000/-, in fact being in excess of the amount actually payable to the said Venkatesh. It is the further case of the defendant that the said money was payable only by the plaintiff. Further, according to the defendant, the said Venkatesh, on receipt of money namely Rs.1,40,000/- from the defendant had parted with the custody of the tipper lorry to the defendant. Admittedly, a claim was made by the defendant in Ex.A. 5, notice setting out the circumstances under which the vehicle came into his custody and he made a claim against the respondent / plaintiff for recovering a sum of Rs.1,40,000/-.

12.No doubt, there was no reply to the said notice dated 11.02.2008. However, it is not in dispute that subsequently, the plaintiff has approached the police authorities and has also recovered the tipper lorry from the defendant. The defendant has not taken any steps in pursuance of the notice dated 11.02.2008, for recovering the alleged amounts due and payable by the plaintiff, despite the plaintiff having taken custody of the tipper lorry. Further, on going through Ex.A.5, I find that there is absolutely no reference to any execution of blank promissory notes by the



S.A.(MD)No.434 of 2022

defendant and handing over of the same to the plaintiff as security for the sale transactions relating to second-hand vehicles. Further, during cross of D.W.1, D.W.1 candidly admits to the fact that the signature found in the suit promissory note dated 25.06.2007, as well as the left thumb impression are his. In fact, the appellant has even admitted to the fact that he executed the suit promissory note in the year 2007. Therefore, on the date of execution of the promissory note, there was no dispute with regard to the tipper lorry which is the fulcrum of the defence set up by the defendant. In such circumstances, I do not see how the Courts below have committed any error in not linking Exs.B.2 to Ex.B.6 & Ex.B.11, with the suit transaction.

13.By examining P.W.2, the plaintiff has also discharged the burden of passing of consideration. P.W.2, the witness to the promissory note, though alleged to be a stock witness has clearly spoken about the execution of the promissory note which has been admitted by the defendant himself and also the payment of money by the plaintiff to the defendant under the suit promissory note. There is nothing brought out by the defendant in cross examination of P.W.2, to discredit his evidence. Merely contending that he is a stock witness does not in any manner improve the case of the



S.A.(MD)No.434 of 2022

defendant, when the defendant himself admits to the execution of the suit promissory note in 2007 itself. Further, the scribe has also been examined and though, it has been vehemently argued by Mr.H.Lakshmi Shankar, that the witnesses have spoken as if the promissory note was filled up even at the time of execution, whereas the plaintiff himself came to Court with a case that he had filled up blank promissory note, I do not see anything turning on the evidence of P.W.2 & P.W.3 in this regard. The plaintiff had to satisfy that the defendant had executed the promissory note and the moment the defendant himself admits execution of promissory note, the burden shifts to the defendant to establish that the promissory note was without consideration. There is absolutely no acceptable evidence with regard to non-passing of consideration. In any event, by examining P.W.2, plaintiff has additionally strengthened his claim that the suit pro-note was also executed for consideration.

14.The other argument that has been placed by Mr.H.Lakshmi Shankar is with regard to the additional evidence that was sought to be produced by the appellant before the First Appellate Court. According to Mr.H.Lakshmi Shankar, the witness, prior to being examined at trial had confessed to the defendant that



S.A.(MD)No.434 of 2022

he was also a victim of circumstances and he was being pushed to a corner by the plaintiff to give evidence in his favour. It is therefore, the argument of Mr.H.Lakshmi Shankar, that an opportunity should be given to the defendant to examine the witness to the promissory note to bring out the truth and establish the defence raised. I am unable to countenance the submissions of Mr.H.Lakshmi Shankar, in this regard. The defendant attempted to produce digital evidence, which is an audio conversation between the witness and the defendant, prior to the witness deposing in the Court. The application came to be rejected and the defendant also unsuccessfully challenged the same before this Court.

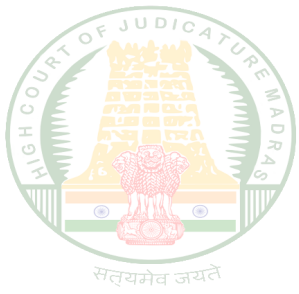
15.This Court, while dismissing the revision in C.R.P.(MD)No. 1113 of 2018, challenging the dismissal of I.A.No.228 of 2016, which was filed for appointment of an Advocate Commissioner for taking the audio CD in Ex.B.2 to an expert to ascertain whether the voice recorded in the said exhibit was that of P.W.2, confirming the order passed by the First Appellate Court on the ground that the defendant had slept over his rights and did not take effective steps pending trial of the suit and that he cannot be permitted to re-open the entire proceedings by taking out such an application before the First Appellate Court. The applications for adducing additional



S.A.(MD)No.434 of 2022

evidence have been discussed in detail by the First Appellate Court and rightly, in my considered opinion, dismissed, holding that the appellant has not established that such evidence was not available with him at the time of trial or that it was available and produced but refused to be marked by the Trial Court. I do not see any infirmity in the findings of the First Appellate Court, proceeding to dismiss the applications for adducing additional evidence, warranting any interference at this Second Appellate stage.

16.Further, in any event, when P.W.2 has been cross-examined in detail even before the Trial Court, the appellant cannot be given an additional opportunity, that too, after having concurrently lost before the Trial Court and the First Appellate Court, to establish certain alleged conversations that occurred between the defendant and P.W.2, that too, relating to events that transpired pending the suit. In fact, the First Appellate Court has rightly held that there is every possibility that the witness could have been won over by the appellant and therefore, such an opportunity cannot be granted to the appellant to examine P.W.2, with regard to the conversations he is alleged to have had with the defendant prior to P.W.2 being examined in Court.



S.A.(MD)No.434 of 2022

17.The Courts below have rightly found that execution of the promissory note and also passing of consideration have been clearly established by the plaintiff by examining P.W.1 to P.W.3 and the said evidence has not been shaken in cross examination and no material contradictions have been brought out to discredit their evidence as well. The burden had therefore, clearly shifted to the defendant to establish that there was no passing of consideration. In the light of the defendant having admitted to the execution of the promissory note, the Courts below have rightly drawn presumption under Section 118 of the Negotiable Instruments Act and found that the defendant had miserably failed to rebut the said legal presumption. I do not see the concurrent findings of fact being perverse or based on no evidence. On the contrary, the findings are clearly based on available pleadings as well as oral and documentary evidence and also being concurrent and the First Appellate Court's findings being final with regard to facts, this Court exercising jurisdiction under Section 100 of CPC, is not entitled to re-appreciate the evidence and come to a different conclusion.

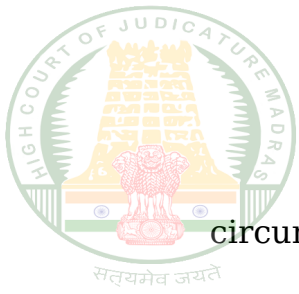
18.With regard to the decision relied on by Mr.H.Lakshmi Shankar, the Hon'ble Supreme Court, in ***Bharat Barrel's*** case,



S.A.(MD)No.434 of 2022

dealing with presumption under Section 118 of the Negotiable Instruments Act, held that the presumption is rebuttable and the defendant is entitled to prove non-existence of consideration by raising a probable defence and if the defendant is successful in proving that the existence of consideration was improbable or doubtful then, the onus will shift back to the plaintiff, who would be obligated to prove passing of consideration and any failure to prove the same would disentitle the plaintiff for grant of relief on the basis of the Negotiable Instruments Act. There is absolutely no quarrel with regard to the settled position of law. As already discussed, the defendant has not been able to come up with any probable defence, to prove non-existence of consideration in the present case. Reliance is only based on the earlier transaction pertaining to the tipper lorry and non-replying to the Ex.A.6.

19.I have already found that the said notice was long after the execution of suit promissory note and therefore, cannot have any link or relevance to the suit claim. Further, the non-replying to Ex.A.5 notice, in my considered opinion also does not affect the plaintiff's case, since in Ex.A.5 notice, there is absolutely no reference to any execution of promissory notes having been signed by the defendant without passing of any consideration. In such



S.A.(MD)No.434 of 2022

circumstances, the defence set up by the appellant does not merit consideration and certainly does not qualify to come within the purview of successful proof of non-existence of consideration. The defence is shallow and certainly not probable to disentitle the plaintiff from seeking recovery of the moneys due under the suit promissory note. Therefore, in view of the above, I do not see any merit in the Second Appeal. The substantial questions of law framed at the time of admission for the purpose of hearing the Second Appeal are answered against the appellant.

20.In fine, the Second Appeal is dismissed and the judgment and decree of the First Appellate Court dated 13.01.2020 in A.S.No.9 of 2016, on the file of the Principal District Judge, Trichy, confirming the judgment and decree dated 29.02.2016, in O.S. No.663 of 2009, on the file of the II Additional Subordinate Judge, Trichy are confirmed. The Second Appeal stands dismissed with costs. Consequently, the connected miscellaneous petition is closed.

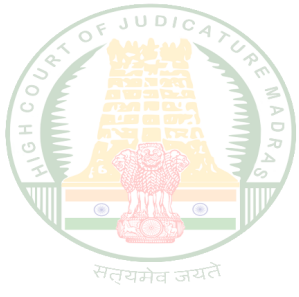
10.07.2026

Index : Yes / No

NCC : Yes / No

MR

15/17



WEB COPY



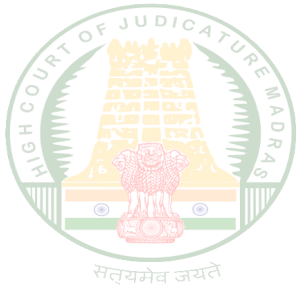
S.A.(MD)No.434 of 2022

To

1.The Principal District Judge,
Trichy.

2.The II Additional Subordinate Judge,
Trichy.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.434 of 2022

P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.434 of 2022

10.07.2026